MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2273 OF 2007

IN

SUIT NO. 1753 OF 2001

ELLORA AGARBATTI WORKS .. PLAINTIFFS

Vs.

THE ORIENTAL FIRE & GENERAL INSURANCE CO. LTD. & ANR. .. DEFENDANTS

Mr. P. M. Shah for plaintiffs

Ms. Megha Sen i/b M/s. Khaitan & Jaykar for defendant 1

CORAM: **SMT. RANJANA DESAI, J.**

DATED: SEPTEMBER 21, 2007.

P.C.

. This notice of motion is taken out by the 1st defendant praying that 24 years delay in filing the written statement be condoned. In the affidavit-in-support of notice of motion it is stated that earlier the matter was handled by Mulla & Mulla Craigie Blunt & Caroe, Advocates & Solicitors. Subsequently the papers and proceedings of the matter were transferred to M/s. Khaitan & Jaykar, Advocates & Solicitors. It is

only when the matter came on board that M/s. Khaitan & Jaykar , Advocates & Solicitors came to know that written statement was not filed. It is further stated that the delay in filing the written statement is unintentional because the present advocates were under the impression that the written statement was already filed and was on the record of this court. It is, therefore, prayed that written statement maybe taken on file because if it is not taken on file, it will seriously affect the 1st defendant.

2. The learned counsel for the plaintiff has strenuously opposed the prayers made in the motion. Affidavit-in-reply has been filed by Mr. Gulab Haridas Shah, partner of the plaintiff. It is stated in the affidavit that the 1st defendant has not given any specific reasons as to what prevented it from filing the written statement. It is further stated that apart from change of advocates, no ground is set out for condoning the delay. It is further stated that substantial right has accrued in favour of the plaintiffs and hence decree be passed in favour of the plaintiffs and against defendant 1 under Order VIII of the Code of Civil Procedure. It is further stated that right

which has accrued in favour of the plaintiffs cannot be taken away as defendant 1 is guilty of delay, latches and negligence.

3. It is true that the delay in filing the written statement is extraordinarily long. The reasons given
for the delay is change of advocates. It appears that the present Advocates & Solicitors of the 1st defendant
were under the impression that the earlier solicitors had filed written statement. It is only when the matter appeared on board, that the present
Advocates & Solicitors appear to have realised that written statement was not filed.

4. It appears that the delay in filing the written statement is not intentional. In any case, in my opinion, in the interest of justice, delay deserves to be condoned only after saddling the 1st defendant with heavy costs. Hence the following order:

. Delay in filing the written statement is condoned. First defendant is permitted to file

written statement only on the condition that 1st defendant pays costs quantified at Rs.35,000/- to the plaintiffs. Costs be paid within a period of four weeks from today. Payment of costs shall be condition precedent to the acceptance of written statement by the office.

. Motion is disposed of in the aforestated terms.

. Operation of the order is stayed for four weeks at the request of the learned counsel for the plaintiffs.

JUDGE